

By: McClendon

H.B. No. 143

A BILL TO BE ENTITLED

AN ACT

relating to granting certain counties regulatory authority around military facilities in certain circumstances; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 231, Local Government Code, is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. PROTECTION OF MILITARY INSTALLATIONS

Sec. 231.271. LEGISLATIVE FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the area that surrounds military installations will be frequented for military and national security purposes by residents from many parts of the state and nation;

(2) orderly development, use, and sustainability of the area is of concern to the entire state; and

(3) without adequate protection regulations, the area will tend to become congested and to be used in ways that interfere with the proper use of the area as a secure location for the continuation of a military establishment.

(b) The powers granted under this subchapter are for the purpose of:

(1) promoting the public health, safety, peace, morals, and general welfare;

(2) protecting and preserving places and areas of military and national security importance and significance; and

1 (3) encouraging state and national security.

2 Sec. 231.272. ELIGIBLE COUNTIES. This subchapter applies
3 only to a county that:

4 (1) has a population of more than one million and in
5 which more than 80 percent of the population lives in a single
6 municipality; or

7 (2) is adjacent to a county described by Subdivision
8 (1).

9 Sec. 231.273. PROTECTION REGULATIONS AND REQUIREMENTS. (a)
10 In an unincorporated area located within five miles of the boundary
11 of a military installation, the commissioners court of the county
12 that contains the area may:

13 (1) regulate the platting or clearing of a tract of
14 land larger than two acres as provided by Subsection (b) if clearing
15 more than 20 percent of the trees on the tract of land is proposed;

16 (2) require developers proposing to develop a tract of
17 land in the area to provide notice to and opportunity for comment by
18 commanders of affected military installations; and

19 (3) require developers of a tract of land in the area
20 to provide notice to prospective buyers of the land relating to
21 potential noise and dust problems that could result from locating
22 in close proximity to an active military installation.

23 (b) A commissioners court adopting a regulation under
24 Subsection (a)(1) shall require developers, before submitting a
25 plat application or clearing a tract of land, to:

26 (1) conduct a survey to determine whether species that
27 are listed as threatened or endangered under federal law use the

1 land as a habitat; and

2 (2) submit the results of the survey to the Parks and
3 Wildlife Department, the United States Fish and Wildlife Service,
4 and any military installation in the vicinity of the land.

5 (c) Notwithstanding Section 245.002, a regulation adopted
6 under this section applies regardless of whether a plan for
7 development of real property or a plat application for a tract of
8 land has been previously filed with a regulatory agency, as that
9 term is defined by Section 245.001.

10 (d) In this section, multiple tracts of land are considered
11 a tract of land for purposes of calculating the amount of acreage
12 under Subsection (a)(1) if:

13 (1) the tracts share a common boundary;

14 (2) the tracts are owned by the same developer or
15 development corporation; and

16 (3) commencement of development of a subsequent tract
17 begins within two years after the commencement of development of a
18 previously developed tract.

19 Sec. 231.274. FEE. A commissioners court acting under this
20 subchapter may set and collect a fee to cover the costs of
21 administering this subchapter. Fees imposed under this section may
22 not exceed the cost of administering this subchapter.

23 Sec. 231.275. COMPLIANCE WITH COUNTY PLAN. A county acting
24 under this subchapter shall:

25 (1) adopt protection regulations under Section
26 231.273(a)(1) in accordance with a county plan for growth and
27 development of the county; and

1 (2) inform municipalities located in the county
2 regarding the adoption of the regulations.

3 Sec. 231.276. PROCEDURE GOVERNING ADOPTION OF REGULATIONS.

4 (a) A protection regulation adopted under Section 231.273(a)(1) is
5 not effective until it is adopted by the commissioners court after a
6 public hearing. Before the 15th day before the date of the hearing,
7 the commissioners court must publish notice of the hearing in a
8 newspaper of general circulation in the county.

9 (b) The commissioners court may establish or amend a
10 protection regulation only by an order passed by a majority vote of
11 the full membership of the court.

12 Sec. 231.277. SPECIAL EXCEPTION. (a) A person aggrieved by
13 a protection regulation adopted under Section 231.273(a)(1) may
14 petition the commissioners court for a special exception to a
15 protection regulation adopted by the commissioners court.

16 (b) The commissioners court shall adopt procedures
17 governing applications, notice, hearings, and other matters
18 relating to the grant of a special exception.

19 Sec. 231.278. ENFORCEMENT; PENALTY. (a) The commissioners
20 court may adopt orders to enforce this subchapter or an order or
21 protection regulation adopted under Section 231.273(a)(1).

22 (b) A person commits an offense if the person violates this
23 subchapter or an order or protection regulation adopted under
24 Section 231.273(a)(1). An offense under this subsection is a
25 misdemeanor punishable by a fine of not less than \$500 or more than
26 \$1,000. Each day that a violation occurs constitutes a separate
27 offense. Trial shall be in the district court.

1 Sec. 231.279. COOPERATION WITH MUNICIPALITIES. The
2 commissioners court by order may enter into agreements with any
3 municipality located in the county to assist in the implementation
4 and enforcement of protection regulations adopted under Section
5 231.273(a)(1).

6 Sec. 231.280. CONFLICT WITH OTHER LAWS. (a) Except as
7 provided by Subsection (b), if a protection regulation adopted
8 under Section 231.273(a)(1) imposes higher standards than those
9 required under another statute or local order or regulation, the
10 regulation adopted under Section 231.273(a)(1) controls. If the
11 other statute or local order or regulation imposes higher
12 standards, that statute, order, or regulation controls.

13 (b) To the extent of a conflict between this subchapter and
14 a regulation adopted by a municipal governing body or municipal
15 board or commission located in the county with jurisdiction over
16 airport zoning, the municipal regulation prevails.

17 SECTION 2. The change in law made by Section 231.273, Local
18 Government Code, as added by this Act, applies only to a project, as
19 that term is defined by Section 245.001, Local Government Code,
20 commenced under Chapter 245, Local Government Code, on or after the
21 effective date of this Act.

22 SECTION 3. This Act takes effect immediately if it receives
23 a vote of two-thirds of all the members elected to each house, as
24 provided by Section 39, Article III, Texas Constitution. If this
25 Act does not receive the vote necessary for immediate effect, this
26 Act takes effect September 1, 2009.